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§ 126.610 May SBA appeal a contracting officer's decision not to reserve a procurement for award as a HUBZone contract?

(a) The Administrator may appeal a CO's decision not to make a particular requirement available for award as a HUBZone contract to the Secretary of the department or head of the agency.

(b) An appeal is initiated by SBA's Procurement Center Representative to the CO, and may be in response to information supplied by the D/HUB, his or her designee, or other interested parties.

[69 FR 29425, May 24, 2004]

§ 126.611 What is the process for such an appeal?

(a) *Notice of appeal.* When the contracting officer rejects a recommendation by SBA's Procurement Center Representative to make a requirement available for award as a HUBZone contract, he or she must notify the Procurement Center Representative as soon as practicable. If the Administrator intends to appeal the decision, SBA must notify the contracting officer no later than five business days after receiving notice of the contracting officer's decision.

(b) *Suspension of action.* Upon receipt of notice of SBA's intent to appeal, the contracting officer must suspend further action regarding the procurement until the head of the contracting activity issues a written decision on the appeal, unless the head of the contracting activity makes a written determination that urgent and compelling circumstances which significantly affect the interests of the United States compel award of the contract.

(c) *Deadline for appeal.* Within 15 business days of SBA's notification to the CO, SBA must file its formal appeal with the Secretary of the department or head of the agency, or the appeal will be deemed withdrawn.

(d) *Decision.* The contracting activity must specify in writing the reasons for a denial of an appeal brought under this section.

[63 FR 31908, June 11, 1998, as amended at 69 FR 29425, May 24, 2004]

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§ 126.612 When may a CO award sole source contracts to qualified HUBZone SBCs?

A contracting officer may award a sole source contract to a qualified HUBZone SBC only when the contracting officer determines that:

(a) None of the provisions of §§ 126.605 or 126.607 apply;

(b) The anticipated award price of the contract, including options, will not exceed:

(1) \$5,500,000 for a requirement within the NAICS codes for manufacturing; or

(2) \$3,500,000 for a requirement within all other NAICS codes;

(c) Two or more qualified HUBZone SBCs are not likely to submit offers;

(d) A qualified HUBZone SBC is a responsible contractor able to perform the contract; and

(e) In the estimation of the CO, contract award can be made at a fair and reasonable price.

[63 FR 31908, June 11, 1998, as amended at 69 FR 29425, May 24, 2004; 74 FR 46887, Sept. 14, 2009]

§ 126.613 How does a price evaluation preference affect the bid of a qualified HUBZone SBC in full and open competition?

(a)(1) Where a CO will award a contract on the basis of full and open competition, the CO must deem the price offered by a qualified HUBZone SBC to be lower than the price offered by another offeror (other than another SBC) if the price offered by the qualified HUBZone SBC is not more than 10% higher than the price offered by the otherwise lowest, responsive, and responsible offeror. For a best value procurement, the CO must apply the 10% preference to the otherwise successful offer of a large business and then determine which offeror represents the best value to the Government, in accordance with the terms of the solicitation.

(2) Where, after considering the price evaluation adjustment, the price offered by a qualified HUBZone SBC is equal to the price offered by a large business (or, in a best value procurement, the total evaluation points received by a qualified HUBZone SBC is equal to the total evaluation points received by a large business), award shall

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be made to the qualified HUBZone SBC.

Example 1: In a full and open competition, a qualified HUBZone SBC submits an offer of \$98, a non-HUBZone SBC submits an offer of \$95, and a large business submits an offer of \$93. The lowest, responsive, responsible offeror would be the large business. However, the CO must apply the HUBZone price evaluation preference. In this example, the qualified HUBZone SBC's offer is not more than 10% higher than the large business' offer and, consequently, the qualified HUBZone SBC displaces the large business as the lowest, responsive, and responsible offeror.

Example 2: In a full and open competition, a qualified HUBZone SBC submits an offer of \$103, a non-HUBZone SBC submits an offer of \$100, and a large business submits an offer of \$93. The lowest, responsive, responsible offeror would be from the large business. The CO must then apply the HUBZone price evaluation preference. In this example, the qualified HUBZone SBC's offer is more than 10% higher than the large business' offer and, consequently, the qualified HUBZone SBC does not displace the large business as the lowest, responsive, and responsible offeror. In addition, the non-HUBZone SBC's offer at \$100 does not displace the large business' offer because a price evaluation preference is not applied to change an offer and benefit a non-HUBZone SBC.

Example 3: In a full and open competition, a qualified HUBZone SBC submits an offer of \$98 and a non-HUBZone SBC submits an offer of \$93. The CO would not apply the price evaluation preference in this procurement because the lowest, responsive, responsible offeror is a SBC.

(b)(1) For purchases by the Secretary of Agriculture of agricultural commodities, the price evaluation preferences shall be:

(i) 10%, for the portion of a contract to be awarded that is not greater than 25% of the total volume being procured for each commodity in a single invitation for bids (IFB);

(ii) 5%, for the portion of a contract to be awarded that is greater than 25%, but not greater than 40%, of the total volume being procured for each commodity in a single IFB; and

(iii) Zero, for the portion of a contract to be awarded that is greater than 40% of the total volume being procured for each commodity in a single IFB.

(2) The 10% and 5% price evaluation preferences for agricultural commodities apply to all offers from qualified HUBZone SBCs up to the 25% and 40%

volume limits specified in paragraph (b)(1) of this section. As such, more than one qualified HUBZone SBC may receive a price evaluation preference for any given commodity in a single IFB.

Example: There is an IFB for 100,000 pounds of wheat. Bid 1 (from a large business) is \$1/pound for 100,000 pounds of wheat. Bid 2 (from a HUBZone SBC) is \$1.05/pound for 20,000 pounds of wheat. Bid 3 (from a HUBZone SBC) is \$1.04/pound for 20,000 pounds. Bid 3 receives a 10% price evaluation adjustment for 20,000 pounds, since 20,000 is less than 25% of 100,000 pounds. With the 10% price evaluation adjustment, Bid 1 changes from \$20,000 for the first 20,000 pounds to \$22,000. Bid 3's price of \$20,800 ($\$1.04 \times 20,000$) is now lower than any other bid for 20,000 pounds. Thus, Bid 3 will be accepted for the full 20,000 pounds. Bid 2 receives a 10% price evaluation adjustment for that amount of its bid when added to the volume in Bid 3 that does not exceed 25% of the total volume being procured. Since 25,000 pounds is 25% of the total volume of wheat under the IFB, and Bid 3 totaled 20,000 pounds, a 10% price evaluation adjustment will be applied to the first 5,000 pounds of Bid 2. With the price evaluation adjustment, the price for Bid 1, as measured against Bid 2, for 5,000 pounds changes from \$5,000 to \$5,500. Bid 2's price of \$5,250 ($\$1.05 \times 5,000$) is lower than Bid 1 for 5,000 pounds. Bid 2 will then receive a 5% price evaluation adjustment for the remaining 15,000 pounds, since the total volume of Bids 3 and 2 receiving an adjustment does not exceed 40% of the total volume of wheat under the IFB (i.e., 40,000 pounds). With the 5% price evaluation adjustment, Bid 1's price for the next 15,000 pounds changes from \$15,000 to \$15,750. Bid 2's price for that 15,000 pounds is also \$15,750 ($\$1.05 \times 15,000$). Because the evaluation price for Bid 2 is *not more than* 10% higher than the price offered by Bid 1, Bid 2's price is deemed to be lower than the price offered by Bid 1. Since the evaluation price for both the first 5,000 pounds (receiving a 10% price evaluation adjustment) and the remaining 15,000 pounds (receiving a 5% price evaluation adjustment) is less than Bid 1, Bid 2 will be accepted for the full 20,000 pounds.

(c) For purchases by the Secretary of Agriculture of agricultural commodities for export operations through international food aid programs administered by the Farm Service Agency, the price evaluation preference shall be 5% on the first portion of a contract to be awarded that is not greater than 20% of the total volume being procured for each commodity in a single IFB.

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(d) A contract awarded to a qualified HUBZone SBC under a preference described in paragraph (b) of this section shall not be counted toward the fulfillment of any requirement partially set aside for competition restricted to SBCs.

[69 FR 29425, May 24, 2004, as amended at 70 FR 51250, Aug. 30, 2005]

§ 126.614 How does a CO apply HUBZone and SDB price evaluation preferences in full and open competition?

A CO may receive offers from both qualified HUBZone SBCs and SDB concerns, or from concerns that qualify as both, during a full and open competition. The CO must first apply the SDB price evaluation preference described in 10 U.S.C. 2323 to all appropriate offerors. The CO must then apply the HUBZone price evaluation preference as described in § 126.613 to all appropriate offerors. A concern that is both a qualified HUBZone SBC and an SDB must receive the benefit of both the HUBZone price evaluation preference described in § 126.613 and the SDB price evaluation preference described in 10 U.S.C. 2323 and the Federal Acquisition Streamlining Act, section 7102(a)(1)(B), Public Law 103-355, in a full and open competition.

Example 1: In a full and open competition, a qualified HUBZone SBC (but not an SDB) submits an offer of \$102; an SDB (but not a qualified HUBZone SBC) submits an offer of \$107; and a large business submits an offer of \$93. The CO first applies the SDB price evaluation preference and adds 10% to the qualified HUBZone SBC's offer thereby making that offer \$112.2, and to the large business's offer thereby making that offer \$102.3. As a result, the large business is the lowest, responsive, and responsible offeror. Next, the CO applies the HUBZone preference and, since the qualified HUBZone SBC's offer is not more than 10% higher than the large business's offer, the CO must deem the price offered by the qualified HUBZone SBC to be lower than the price offered by the large business.

Example 2: A qualified HUBZone SBC (but not an SDB) submits an offer of \$102; a qualified HUBZone SBC that is also an SDB submits an offer of \$105; an SDB (but not a qualified HUBZone SBC) submits an offer of \$107; a small business concern (but not a qualified HUBZone SBC or an SDB) submits an offer of \$100; and a large business submits an offer of \$93. The CO must first apply the

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SDB price evaluation preference to establish the lowest, responsive, and responsible offeror. Thus, the qualified HUBZone SBC's offer becomes \$112.2; the qualified HUBZone SBC/SDB's offer remains \$105; the SDB's offer remains \$107; the small business concern's offer becomes \$110; and the large business's offer becomes \$102.3. As a result of the SDB price evaluation preference, the large business is the lowest, responsive, and responsible offeror. Next, the CO must apply the HUBZone price evaluation preference and if a qualified HUBZone SBC's price is not more than 10% higher than the large business's price, the CO must deem its price to be lower than the large business's price. In this example, the qualified HUBZone price of \$112.2 is not more than 10% higher than the large business's price, however, the qualified HUBZone/SDB's price of \$105 is also not more than 10% higher than the large business's price and is lower than the qualified HUBZone SBC's price. Consequently, the CO must deem the price of the qualified HUBZone/SDB as the lowest, responsive, and responsible offeror.

[69 FR 29426, May 24, 2004]

§ 126.615 May a large business participate on a HUBZone contract?

A large business may not participate as a prime contractor on a HUBZone award but may participate as a subcontractor to an otherwise qualified HUBZone SBC, subject to the contract performance requirements set forth in § 126.700.

§ 126.616 What requirements must a joint venture satisfy to submit an offer on a HUBZone contract?

A joint venture may submit an offer on a HUBZone contract if the joint venture meets all of the following requirements:

(a) *HUBZone joint venture.* A qualified HUBZone SBC may enter into a joint venture with another qualified HUBZone SBC for the purpose of submitting an offer for a HUBZone contract. The joint venture itself need not be certified as a qualified HUBZone SBC.

(b) *Size of concerns.* (1) A joint venture of two or more qualified HUBZone SBCs may submit an offer for a HUBZone contract so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract and the